Wilkett Enterprises, LLC *and* International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 769, AFL–CIO. Cases 9–CA–44279, 9–CA–44280, and 9–CA–44281

December 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon charges filed by the Union, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 769, AFL–CIO, on March 19, 2008, the General Counsel issued the consolidated complaint on June 25, 2008, against Wilkett Enterprises, LLC, the Respondent. The consolidated complaint alleged that the Respondent violated Section 8(a)(3) and (1) of the Act.

Subsequently, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 9 on August 8, 2008. Among other things, the settlement agreement required the Respondent to (1) post a notice to employees regarding the complaint allegations, and (2) make whole four employees by paying them the amounts set forth in the settlement agreement over a 4-month period as outlined in a schedule of payments.[1] The settlement agreement also contained the following provision:

> CHARGED PARTY'S FAILURE TO COMPLY—The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director may, upon the allegations of the charge(s) in the instant case(s) reissue the complaint previously filed in the instant case(s). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations of the Act alleged therein. The Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an order requiring the Charged Party to show cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations, including, but not limited to, the remedial provisions of the Settlement Agreement. The parties further agree that the Board's order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the Charged Party.

By letter dated November 3, 2008, the compliance officer for Region 9 notified the Respondent that the Region did not receive any installment payment for September or October 2008 and that the Respondent was not in compliance with the settlement agreement. The letter also stated that unless the Respondent complied with the terms of the settlement agreement by November 17, 2008, the complaint would be reissued, a motion for summary judgment would be filed, and all of the allegations of the complaint would be deemed to be admitted as true. The Respondent failed to comply. Accordingly, pursuant to the terms of the noncompliance provisions of

[1] Under the settlement agreement, the Respondent was to pay a total amount of $7326 in backpay and $238.10 in interest in monthly installment payments on the 30th day of each month beginning in September 2008 and ending in December 2008, to the following employees: Jarrod Denney ($432 backpay and $14.04 interest); Justen Denney ($504 backpay and $16.38 interest); William Morgan ($355.50 backpay and $11.56 interest); and Paul Sims ($540 backpay and $17.35 interest). In addition, the settlement agreement provided that separate checks be issued for backpay and interest, and for appropriate withholdings from the checks representing backpay.

Contrary to the figure in the settlement agreement, our calculations reveal a total of $237.32 in interest, and we have corrected this arithmetic error in the order and notice. In addition, Justen Denney's name is spelled differently in the complaint and in the settlement agreement. We have followed the spelling in the settlement agreement and in the General Counsel's memorandum in support of motion for summary judgment. Similarly, William Morgan is listed as "William Morgan, Jr." in the complaint, but we have followed the designation in the settlement agreement and the General Counsel's memorandum.

the settlement agreement, the Regional Director reissued the consolidated complaint on November 24, 2008.

On December 5, 2008, the General Counsel filed a Motion for Summary Judgment with the Board. Thereafter, on December 10, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment[2]

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to pay the agreed-upon installment payments. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the allegations in the reissued consolidated complaint are true.[3] Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the construction industry as a general contractor from its Jackson, Ohio location.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, purchased and received at its Jackson, Ohio facility goods valued in excess of $50,000 directly from points located outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Greg Wilkett	-	Owner
Kevin Napper	-	Business Manager
Rick Parsons	-	Project Lead

1. About February 11, 2008, the Respondent, by Kevin Napper, at its Jackson, Ohio facility, in a Monday morning staff meeting, threatened employees by telling them that the Respondent would close its facility because of their union activities.

2. About February 28, 2008, the Respondent, by Rick Parsons, at its Jackson, Ohio facility, threw away employees' union literature.

3. About March 10, 2008, the Respondent converted employees David Sech, Troy Stewart, and Mark Seymour from hourly positions to salaried positions.

4. About March 10, 2008, the Respondent terminated hourly employees Jarrod Denney, Justen Denney, Matt Mahley, William Morgan, Paul Sims, and Scott Sims and offered them work as subcontractors.

5. The Respondent engaged in the conduct described above in paragraphs 3 and 4 because the named employees of the Respondent formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the conduct described above in section II, paragraphs 1-2, the Respondent has been interfering with, restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in section II, paragraphs 3–5, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, as requested by counsel for the General Counsel. Specifically, the Respondent shall comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 9 on August 8, 2008, by paying to the discriminatees the backpay and interest owed under the settlement agreement. In limiting our affirmative remedy to the backpay and interest owed under the settlement agreement, we note that the General Counsel is empowered under the

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[3] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

default provisions of the settlement agreement to seek "full remedy for the violations found as is customary to remedy such violations," including instatement, full backpay, and expungement. However, in his Motion for Summary Judgment, the General Counsel has not sought such additional remedies and we will not, sua sponte, include them within this remedy.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Wilkett Enterprises, LLC, Jackson, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by telling them that it would close its facility because of their union activities.

(b) Throwing away employees' union literature.

(c) Converting employees from hourly positions to salaried positions because of their union or concerted activities or to discourage employees from engaging in these activities.

(d) Terminating employees and offering them work as subcontractors because of their union or concerted activities or to discourage employees from engaging in these activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit $7326 in backpay plus $237.32 in interest to Region 9 of the National Labor Relations Board to be disbursed to Jarrod Denney, Justen Denney, William Morgan, and Paul Sims, in accordance with the terms of the settlement agreement approved by the Regional Director on August 8, 2008.

(b) Within 14 days after service by the Region, post at its facility in Jackson, Ohio, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 11, 2008.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees by telling them that we will close our facility because of their union activities.

WE WILL NOT throw away employees' union literature.

WE WILL NOT convert employees from hourly positions to salaried positions because of their union or concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT terminate employees and offer them work as subcontractors because of their union or con-

[4] In his Motion, the General Counsel requests that the Board grant the Motion and relief requested, "including the issuance of an order requiring Respondent to make the named individuals whole in the manner provided for in the Agreement and as set forth in detail below," listing the total amounts of backpay and interest due pursuant to the four installment payments provided for in the settlement agreement.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

certed activities or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay $7326 in backpay plus $237.32 in interest to Region 9 of the National Labor Relations Board to be disbursed to Jarrod Denney, Justen Denney, William Morgan, and Paul Sims, in accordance with the terms of the settlement agreement approved by the Regional Director on August 8, 2008.

WILKETT ENTERPRISES, LLC